

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0430**

Sharon Falknor,
Appellant,

vs.

City of Minneapolis,
Respondent.

**Filed December 11, 2023
Affirmed
Schmidt, Judge**

Hennepin County District Court
File No. 27-CV-22-11593

Steve Anderson, Anderson Law Group, PLLC, St. Paul, Minnesota (for appellant)

Kristyn Anderson, Minneapolis City Attorney, Gregory P. Sautter, Assistant City Attorney,
Minneapolis, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Schmidt, Judge; and
Hooten, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Appellant challenges the summary-judgment dismissal of her nuisance claim against respondent-city, arguing that the district court erred by determining vicarious official immunity barred her claim. We affirm.

FACTS¹

For over a decade, appellant Sharon Falknor owned a rental property next door to Walter Bratton in Minneapolis. Bratton's property consistently failed to comply with the Minneapolis Municipal Code, leading respondent City of Minneapolis (the city) to issue over 200 code violations against Bratton, with 60 violations being assessed while Bratton and Falknor were neighbors.

The conduct surrounding Bratton's property escalated into illegal activity. In 2020, the criminal conduct caused Falknor's tenants to endure property destruction, threats of arson, and multiple shooting incidents. In response to the increasingly violent criminal activity, the residents vacated Falknor's property and terminated their lease agreements. The following year, the city's Department of Regulatory Services (DRS) initiated the process of revoking Bratton's rental license. The city council officially revoked Bratton's rental license in March 2022, and Bratton sold his property in May 2022.

¹ Consistent with our review of an order granting summary judgment, our recitation of the facts includes only undisputed facts that we view in the light most favorable to Falknor as the nonmoving party. *Kenneh v. Homeward Bound, Inc.*, 944 N.W.2d 222, 228 (Minn. 2020).

After Bratton sold his property, Falknor sued the city for nuisance, under Minn. Stat. § 561.01 (2022), alleging that the city's delay in revoking Bratton's rental license caused her emotional, health, and property damages. The city filed a motion to dismiss on the pleadings under Minn. R. Civ. P. 12.03. After taking judicial notice of certain public records, the district court converted the city's motion to dismiss to a motion for summary judgment. The district court granted the city summary judgment, determining that the city was entitled to vicarious official immunity on Falknor's nuisance claim. This appeal follows.

DECISION

Appellate courts review a district court's grant of summary judgment de novo to determine if there are genuine issues of material fact and whether the district court misapplied the law. *Kenneh*, 944 N.W.2d at 228. We view the evidence in the light most favorable to the nonmoving party. *Id.*

The district court did not err by granting the city summary judgment based on vicarious official immunity.

Falknor asserts that the district court erred by determining that the DRS director's enforcement actions concerning Bratton's property were protected by official immunity, thereby entitling the city to vicarious official immunity as the director's employer. Falknor contends that, given Bratton's numerous code violations, the city should have removed Bratton or revoked his rental license much earlier. We are not persuaded.

A. The district court properly determined that the DRS director is entitled to official immunity on Falknor’s nuisance claim.

The official immunity doctrine is premised on allowing public employees to take independent action without the fear of personal liability for those actions. *Anderson v. Anoka Hennepin Indep. Sch. Dist. 11*, 678 N.W.2d 651, 655 (Minn. 2004). Official immunity is a complete defense to state law tort claims. *Mumm v. Mornson*, 708 N.W.2d 475, 490 (Minn. 2006). Whether the DRS director is a public official whose conduct qualifies for official immunity is a legal question that we review de novo. *Vassallo ex rel. Brown v. Majeski*, 842 N.W.2d 456, 462 (Minn. 2014).

The official immunity doctrine protects public officials from personal liability in performing discretionary duties. *Kariniemi v. City of Rockford*, 882 N.W.2d 593, 599–600 (Minn. 2016). Minnesota courts evaluate official immunity claims under a three-part test, analyzing: (1) the conduct at issue; (2) whether the conduct is discretionary or ministerial; and (3) if discretionary, whether the conduct was willful or malicious. *Majeski*, 842 N.W.2d at 462. An official’s duties are considered “discretionary” if the duty involves the official exercising their individual professional judgment to serve the goals of their government employer. *Janklow v. Minn. Bd. of Exam’rs for Nursing Home Adm’rs*, 552 N.W.2d 711, 716 (Minn. 1996). Conversely, “ministerial” duties are “absolute, certain, and imperative” and compel public officials to take certain actions under a given set of circumstances. *Wiederholt v. City of Minneapolis*, 581 N.W.2d 312, 315–16 (Minn. 1998).

Falknor alleges the DRS director failed to take more prompt and severe disciplinary action against Bratton. Falknor contends that Bratton’s long history of code violations conferred a ministerial duty on the DRS director to revoke Bratton’s rental license before 2022. We disagree.

The plain language of the city’s municipal code establishes only the DRS director’s investigative duties are ministerial, while the director’s enforcement powers are discretionary. The municipal code states that the DRS director “shall make inspections” to determine the conditions of rental units and “shall” give property owners notice of infractions discovered upon inspection. *See* Minneapolis, Minn., Code of Ordinances (MCO) §§ 244.130 (2013), .150 (2019). In contrast, the DRS director “*may* seek enforcement . . . by any appropriate form of civil action and *may* seek enjoinder of any continued violation thereof and seek to compel obedience.” MCO § 244.80 (2013) (emphasis added). Furthermore, the municipal code provisions outlining the process to revoke a rental license are only invoked after “the [DRS director] determines” that the rental unit fails to meet the city’s licensing standards. MCO §§ 244.1930 (2013), .1940 (2011).

The municipal code’s use of the word “shall” when addressing the DRS director’s investigative duties signifies that the director’s investigative functions are mandatory, while the code’s repeated use of the word “may” when describing the director’s enforcement powers indicates that the director’s choice to exercise those powers is discretionary. *See City of Circle Pines v. County of Anoka*, 977 N.W.2d 816, 823 (Minn. 2022) (explaining the impact of the words “shall” and “may” in statutory

interpretation). Additionally, a rental-license revocation must be preceded by the DRS director's "determination" that a property does not meet the city's licensing standards, implying that the director must independently evaluate the circumstances in each case to determine if revocation is appropriate. *See, e.g., Papenhausen v. Schoen*, 268 N.W.2d 565, 572 (Minn. 1978) (holding medical chief's evaluations based on his personal examination of circumstances was an "indisputably discretionary activity").

Falknor's nuisance action challenges the DRS director's conduct by alleging that the director improperly delayed exercising their enforcement powers. Because exercising enforcement powers is a discretionary duty, and because Falknor does not allege that the director engaged in any willful or malicious conduct, the DRS director is entitled to official immunity from Falknor's suit.

B. The district court properly determined that the city is entitled to vicarious official immunity.

Although Falknor failed to name the DRS director in her nuisance suit, she makes no argument that the city should be held liable if the DRS director is entitled to official immunity. Indeed, the city is entitled to immunity under the vicarious official immunity doctrine. *Wiederholt*, 581 N.W.2d at 317 (noting that to deny a government employer vicarious immunity because the official was not named in the suit would allow plaintiffs to defeat immunity by declining to name the official as a defendant). Vicarious immunity is generally afforded to government employers if the employee is entitled to official immunity. *Sletten v. Ramsey County*, 675 N.W.2d 291, 300–01 (Minn. 2004).

There is no reason to break from the principle that entitles a governmental entity to vicarious immunity when their employee receives official immunity. The city's municipal code provides a structured policy framework defining the scope of the DRS director's duties. Moreover, to expose the city to liability for the DRS director's enforcement decisions would inhibit the director's performance, especially given the substantial number of rental properties in the city and the volume of cases handled by the director. Because the DRS director is entitled to official immunity in exercising their discretionary enforcement powers, and because the circumstances here support extending the director's immunity to the city, the district court did not err by awarding the city summary judgment based on vicarious official immunity.

Affirmed.